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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 KRISTY DOUGLAS and TYSHEKA
11 RICHARD, individually and on behalf of all
others similarly situated,

12 Plaintiffs,

13 v.

14 XEROX BUSINESS SERVICES, LLC, a
15 Delaware Limited Liability Company;
16 LIVEBRIDGE, INC., an Oregon
17 Corporation; AFFILIATED COMPUTER
SERVICES, INC., a Delaware Corporation;
18 AFFILIATED COMPUTER SERVICES,
LLC, a Delaware Limited Liability
Company,

19 Defendants.

NO.

COLLECTIVE ACTION COMPLAINT

20 **I. INTRODUCTION**

21 1.1 Plaintiffs bring this action on behalf of themselves and all similarly
22 situated employees against Defendants for engaging in a systematic scheme of wage
23 and hour violations. The scheme involves, among other things, requiring or permitting
24 employees to work off the clock, failing to pay employees for all hours worked, and
25 failing to pay employees for overtime work.
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1 information and belief, Xerox has exercised control over Livebridge and the Affiliated
2 Computer Services companies since it purchased them in 2010. Xerox conducts
3 business, including employing thousands of employees, in the Western District of
4 Washington.

5 3.4 Defendant Livebridge, Inc. is an Oregon corporation with its
6 headquarters in Texas. On information and belief, Livebridge is the subsidiary
7 company or affiliate of co-Defendant Xerox. Livebridge has conducted business in the
8 Western District of Washington. On information and belief, Livebridge has employed
9 thousands of employees in the United States, including Plaintiff Richard and proposed
10 Class members.

11 3.5 Defendant Affiliated Computer Services, Inc. is a Delaware corporation
12 with its headquarters in Texas. On information and belief, Affiliated Computer
13 Services, Inc. is the subsidiary or affiliate of co-Defendant Xerox and was acquired by
14 Xerox in 2010. Affiliated Computer Services, Inc. has conducted business in the
15 Western District of Washington. On information and belief, Affiliated Computer
16 Services, Inc. has employed thousands of employees in the United States, including
17 Plaintiffs and proposed Class members.

18 3.6 Defendant Affiliated Computer Services, LLC is a Delaware limited
19 liability company with its headquarters in Texas. On information and belief, Affiliated
20 Computer Services, LLC is the subsidiary or affiliate of co-Defendant Xerox. On
21 information and belief, Affiliated Computer Services, LLC has conducted business in
22 the Western District of Washington. On information and belief, Affiliated Computer
23 Services, LLC employs thousands of employees in the United States, including
24 Plaintiffs and proposed Class members.

25 IV. CONCERTED ACTION ALLEGATIONS

26 4.1 Pursuant to 29 U.S.C. §216(b), Plaintiffs bring this case as a concerted
27 action on behalf of all employees of Defendants in the United States who are similarly

1 situated, i.e., all current and former employees of Defendants who have been
 2 employed by Defendants in the United States as non-exempt customer service
 3 employees at any time between October 12, 2009 and the date of final disposition of
 4 this action (the "Class").

5 4.2 The named Plaintiffs are similarly situated to the members of the
 6 proposed Class because they were employed by Defendants in the same or similar
 7 positions, they were required to use the same or similar systems to record their time
 8 and work activities, they were required to perform work before and after their shifts
 9 without compensation, and they were systematically denied full compensation for all
 10 hours worked, including overtime hours.

11 4.3 This case is related to a state-law class action case, *Hill v. Xerox Corp.*
 12 *et al*, Case No. 2-cv-00717-JCC, which is currently pending in this Court.

13 V. SUMMARY OF FACTUAL ALLEGATIONS

14 5.1 Common Course of Conduct. Defendants have engaged in, and
 15 continue to engage in, a common course of wage and hour abuse against customer
 16 service employees through their pay practices, including but not limited to the "Activity
 17 Based Compensation" ("ABC") plan or other incentive-based compensation plans.
 18 Under these plans, Defendants pay customer service employees based on a hybrid
 19 model that combines hourly rates with complicated incentive rates for time spent on
 20 incoming phone calls with customers. Defendants' compensation system results in
 21 customer service employees performing unpaid work both on and off the clock.
 22 Defendants fail to track and pay for all regular and overtime hours worked by customer
 23 service employees. For example, Defendants only track and pay for the time in which
 24 customer service employees are logged into Defendants' phone system and taking
 25 calls or in special training sessions. As another example, Defendants require
 26 customer service employees to perform uncompensated, off-the-clock work when the
 27 employees are not logged into the time-keeping system and when the employees are

1 logged into certain auxiliary codes in the system. Defendants also fail to pay customer
2 service employees for all overtime work.

3 5.2 Off-the-Clock Work. Defendants' common course of wage and hour
4 abuse includes but is not limited to routinely failing to compensate customer service
5 employees for off-the-clock work. As a result of this off-the-clock work, customer
6 service employees are deprived of straight-time and overtime wages. Defendants
7 have had actual or constructive knowledge of the fact that customer service
8 employees are performing uncompensated off-the-clock work.

9 a. Pre-Shift Work. During the applicable statute of limitations period,
10 Defendants have required Plaintiffs and proposed Class members to perform unpaid,
11 pre-shift work, including but not limited to finding an open computer terminal, starting
12 the computer system by entering a username and password, opening multiple
13 programs required for their work and waiting for all necessary programs to load, all
14 before officially logging on to the time-keeping system to "start" their scheduled shift.
15 The time for which Defendants' customer service employees are paid begins only
16 when they log on to the time-keeping system, which they are not allowed to do until
17 their scheduled shift start time. Plaintiffs and proposed Class members are not paid
18 for work performed before logging on to the system. During training, Defendants
19 emphasize to customer service employees that they must arrive at work 15 minutes
20 prior to their scheduled shift time in order to find a computer terminal, activate the
21 computer, open required programs, and perform other tasks before logging on to the
22 system (and thus starting the time clock). Defendants pay customer service
23 employees only for the time they are logged on to certain settings in the system, which
24 normally corresponds with the scheduled shift time, not the time they are actually
25 working. In fact, customer service employees are not permitted to log on to the
26 system and start the time clock until they have completed all of their pre-log-on work.
27 Plaintiffs and proposed Class members often spend approximately 15 minutes per day

1 working on pre-shift activities alone. The preliminary activities are necessary for
2 Plaintiffs and proposed Class members to perform their principal work activities and
3 are part of Defendants' ordinary course of business. Defendants have had actual or
4 constructive knowledge of the fact that customer service employees are not being
5 compensated for pre-shift work.

6 b. Post-Shift Work. During the applicable statute of limitations
7 period, Defendants have required Plaintiffs and proposed Class members to perform
8 unpaid work after logging out of the system (i.e., clocking out). After logging out of the
9 system and "ending" their scheduled shifts, Plaintiffs and proposed Class members
10 are required to close several programs on their computers and sign out of the
11 computers. During training, Defendants emphasizes to customer service employees
12 that they must log out of the system (i.e., clock out) before closing any open programs
13 on their computers. Plaintiffs and proposed Class members often spend
14 approximately 10-15 minutes per day working on post-shift activities alone. In
15 addition, on information and belief, Defendants require customer service employees to
16 perform other unpaid work outside of the employees' scheduled shift time. Defendants
17 have had actual or constructive knowledge of the fact that customer service
18 employees are not being compensated for post-shift work.

19 5.3 Other Unpaid Work. During the applicable statute of limitations period,
20 Defendants have failed to pay Plaintiffs and proposed Class members for all hours
21 worked during the scheduled and recorded workday. Under the Defendants' ABC or
22 incentive-based compensation plans, Defendants record and pay for the work of
23 Plaintiffs and proposed Class members in a variety of ways, using separate and
24 variable rates for assigned customer service tasks and other activities. Under the ABC
25 plan, Defendants do not pay for all hours worked by Plaintiffs and proposed Class
26 members. Defendants have had actual or constructive knowledge of the fact that
27 customer service employees are not being compensated for all hours worked.

5.4 Overtime. Defendants' common course of wage and hour abuse includes routinely failing to properly record and compensate customer service employees for all overtime hours worked. Employees are entitled to one and one-half times the regular rate of pay for all hours worked in excess of 40 hours per week. As outlined above, Defendants fail to pay for pre-shift and post-shift work performed by customer service employees, and for other work performed on the clock, all of which results in failure to pay employees one and one-half times the regular rate of pay for all hours worked in excess of 40 hours per week. Defendants have had actual or constructive knowledge of the fact that customer service employees are not being compensated for all overtime hours worked.

VI. CLAIMS

6.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

6.2 Defendants regularly engage in commerce and their employees are engaged in interstate commerce.

6.3 Defendants are and have been employers for purposes of the FLSA, 29 U.S.C. §203(d).

6.4 Plaintiffs and the proposed class have been employees of Defendants for purposes of the FLSA, 29 U.S.C. §203(e).

6.5 Failure to Pay Minimum Wage. While employed by Defendants, Plaintiffs and proposed Class members performed work for Defendants for which they were not compensated. Defendants failed to pay Plaintiffs and proposed Class members the legal minimum wage for all hours worked, in violation of 29 U.S.C. §206.

6.6 Failure to Pay Overtime Premiums. While employed by Defendants, Plaintiffs and proposed Class members performed overtime work for which no additional compensation was paid to them. Defendants failed to pay Plaintiffs and

1 proposed Class members one and one-half times their regular rates of pay for hours
2 worked in excess of forty hours per week, in violation of 29 U.S.C. §207.

3 6.7 Willful Violations. Throughout the class period, Defendants have willfully,
4 deliberately, and knowingly refused to pay Plaintiffs and proposed Class members for
5 all hours worked and for overtime hours worked.

6 **VII. PRAYER FOR RELIEF**

7 7.1 WHEREFORE, Plaintiffs, on their own behalves and on behalf of the
8 proposed Class, seek judgment against Defendants as follows:

9 a. Certification of this case as a collective action under 29 U.S.C.
10 § 216(b);

11 b. A declaration that Defendants are financially responsible for
12 notifying all Class members of Defendants' wage and hour violations;

13 c. Appoint Plaintiffs as representatives of the Class;

14 d. Appoint the undersigned counsel as counsel for the Class;

15 e. Declare that Defendants' actions complained of herein violate the
16 FLSA;

17 f. Enjoin Defendants and their officers, agents, successors,
18 employees, representatives, and any and all persons acting in concert with
19 Defendants, as provided by law, from engaging in the unlawful and wrongful
20 conduct set forth herein;

21 g. Award Plaintiffs and the Class compensatory and liquidated
22 damages;

23 h. Award Plaintiffs and the Class reasonable attorneys' fees and
24 costs;

25 i. Award Plaintiffs and the Class prejudgment and post-judgment
26 interest, as provided by law;

j. Permit Plaintiffs and the Class leave to amend the Complaint to conform to the evidence presented at trial; and

k. Grant such other and further relief as the Court deems necessary, just, and proper.

DATED this 12th day of October, 2012.

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